

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SOE-02 AID-05 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 H-01 INR-10 INT-05 L-03
NSAE-00 NSC-05 OMB-01 PM-05 ICA-11 OES-07 SP-02
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FM AMEMBASSY BRUSSELS
TO SECSTATE WASHDC 6766
INFO ALL EC CAPITALS
DOE WASHDC

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USEEC

PARIS ALSO FOR OECD

E.O.11652: H/A
TAGS: ENRG, EEC
SUBJECT: STATUS OF EC COMMISSION'S PROPOSAL TO ALLEVIATE
-- EC PETROLEUM REFINING PROBLEMS

REF: BRUSSELS 7578

1. SUMMARY: ALL OIL COMPANIES EXCEPT MOBIL, AMOCO AND CONOCO, HAVE NOW SUPPLIED THE DATA REQUESTED BY THE EC COMMISSION. THE COMMISSION INTENDS TO PROCEED WITH ITS "CONSULTATIONS" WITH THE OIL INDUSTRY TO RATIONALIZE THE EC REFINING INDUSTRY EVEN IF THE MAY 30 ENERGY COUNCIL DOES NOT APPROVE A COMPROMISE SET OF "CONCLUSIONS", UNLESS SOME MEMBER STATE RAISES OBJECTIONS. THE COMPROMISE CONCLUSIONS HAVE BEEN FORMULATED BY THE DANISH PRESIDENCY TO TRY TO RECONCILE DIFFERENCES BETWEEN THE MEMBER STATES ON THE REFINERY IMPROVEMENT MEASURE. THE EC COMMISSION
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RECOGNIZES THAT IF IT PROCEEDS WITH "CONSULTATIONS" WITH THE OIL INDUSTRY ON REFINERY ACTIVITIES IT COULD CREATE PROBLEMS UNDER US ANTI-TRUST LEGISLATION AND IS CONSIDERING HOW THESE PROBLEMS CAN BE RESOLVED TO PERMIT AMERICAN COMPANIES TO PARTICIPATE. END SUMMARY.

2. EC COMMISSION AND OIL COMPANY OFFICIALS HAVE INFORMED

THE MISSION THAT THE ADDITIONAL EXPLANATIONS PROVIDED IN LETTERS FROM DIRECTOR GENERAL FOR ENERGY WILLIAMS AND DIRECTOR FOR RULES OF COMPETITION VERGES (REFTEL) HAVE SATISFIED EXXON WHICH HAS NOW PROVIDED CURRENT INFORMATION ON ITS PLANS TO CLOSE SURPLUS REFINERY CAPACITY AND ON PROJECTED 1978 REFINERY RUNS IN THE EUROPEAN COMMUNITY. THIS LEAVES MOBIL AND THE QUANTITATIVELY LESS IMPORTANT CONOCO AND AMOCO AS THE ONLY OIL COMPANIES WHO HAVE NOT RESPONDED FAVORABLY TO THE COMMISSION'S REQUEST.

3. THE DEGREE OF SPECIFICITY IN THE RESPONSES OF THE INDIVIDUAL COMPANIES HAS VARIED GREATLY DEPENDING LARGELY UPON EACH COMPANY'S EVALUATION OF THE APPLICABILITY OF ANTI-TRUST LEGISLATION. FOR EXAMPLE, SOME COMPANIES HAVE PROVIDED DETAILED INFORMATION ON THE PROJECTED THROUGHPUT FOR EACH OF ITS REFINERIES IN THE COMMUNITY IN THE BELIEF THAT PROVIDING SUCH INFORMATION PER SE IS NOT SUBJECT TO ANTI-TRUST CONSIDERATIONS. OTHER COMPANIES (I.E., EXXON, SHELL AND BP) HAVE PROVIDED ONLY A GLOBAL FIGURE SHOWING ITS ENTIRE EXPECTED REFINERY THROUGHPUT FOR ALL ITS FACILITIES IN EC MEMBER STATES AS A WHOLE.

4. GEORGES BRONDEL, DIRECTOR FOR OIL AND GAS OF THE EC COMMISSION, TOLD A MISSION OFFICER ON MAY 22 THAT THE COMMISSION INTENDS TO PROCEED WITH ITS REFINERY RATIONALIZED OFFICIAL USE

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ZATION PROGRAM ON ITS OWN AUTHORITY, EVEN IF THE MAY 30 EC ENERGY COUNCIL DOES NOT ENDORSE THE MEASURE UNLESS THE COUNCIL AS A WHOLE OR EVEN INDIVIDUAL MEMBER STATES EXPRESS STRONG OBJECTIONS. HE RECALLED THAT THE COMMISSION INTENDS TO PROCEED IN ESSENTIALLY THREE STAGES: (A) COMPILE THE NECESSARY BASIC INFORMATION FROM THE COMPANIES AND OTHER SOURCES; (B) PREPARE APPROPRIATE SUMMARIES OF SUPPLY AND DEMAND FOR PETROLEUM PRODUCTS AND DEGREE OF REFINERY UTILIZATION FOR THE CURRENT YEAR; AND, (C) "CONSULT" WITH THE COMPANIES ON A BILATERAL BASIS IN AN EFFORT TO HAVE THEM ADJUST THEIR PROGRAMS, IF NECESSARY, ON A VOLUNTARY BASIS TO ACCORD WITH THE COMMISSION'S PROJECTIONS TO ASSURE A MORE RATIONAL USE OF REFINERY CAPACITIES.

5. BRONDEL REPEATED THAT THE COMMISSION NOW ACCEPTS THAT THIS "CONSULTATION PROCESS" COULD RESULT IN ANTI-TRUST PROBLEMS UNDER US LEGISLATION AND BELIEVES THESE SHOULD BE SETTLED IN ORDER TO PERMIT US COMPANIES TO COOPERATE WITH THE PROGRAM. THE COMMISSION IS CONSIDERING THE FOLLOWING THREE WAYS TO RESOLVE THIS PROBLEM. HE SAID HE WAS PROVIDING THE INFORMATION TO KEEP THE US AWARE OF THE COMMISSION'S CONSIDERATION OF THE PROBLEM, NOT NECESSARILY FOR COMMENT.

(A) THE MATTER COULD BE DISCUSSED INFORMALLY DURING THE PERIODIC INFORMAL CONSULTATIONS BETWEEN OFFICIALS OF THE COMMISSION'S DIRECTORATE GENERAL FOR COMPETITION (DG-IV) AND OF THE DEPARTMENT OF JUSTICE, POSSIBLY AROUND JUNE 15 IN WASHINGTON. BRONDEL SAID THAT HE WOULD BE PREPARED TO ACCOMPANY MR. VERGES WHO WOULD REPRESENT DG-IV FOR THESE CONSULTATIONS, OR VERGES COULD RAISE THE PROBLEM ALONE.

(B) THE COMMISSION COULD EMPLOY AN INDEPENDENT LEGAL EXPERT TO STUDY THE PROBLEM AND, AFTER CONSULTATION WITH THE DEPARTMENT OF JUSTICE, PREPARE ITS FINDINGS FOR THE

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EC COMMISSION AND THE OIL INDUSTRY WITH SUGGESTIONS AS TO HOW ANY POSSIBLE ANTI-TRUST DIFFICULTIES COULD BE AVOIDED.

(C) THE COMMISSION COULD ASK THE EC COUNCIL TO PASS A REGULATION REQUIRING THE COMPANIES TO SUPPLY THE DESIRED INFORMATION AND PRESUMABLY SUBSEQUENTLY CONSULT WITH THE COMMISSION. BRONDEL ADMITTED THAT OBTAINING COUNCIL APPROVAL OF SUCH CONSTRAINING MEASURES FOR THE OIL INDUSTRY MIGHT BE DIFFICULT. EVEN IF ADOPTED BY THE COUNCIL, SUCH A REGULATION WOULD HAVE TO BE IMPLEMENTED THROUGH NATIONAL GOVERNMENTS WHICH WOULD INEVITABLY INVOLVE THEM IN DECISIONS REGARDING THE CLOSURE OF REFINERIES AND THE ADJUSTMENT OF REFINERY THROUGHPUT IN THEIR COUNTRIES IN A MANNER WHICH MIGHT NOT NECESSARILY

BE BEST FOR THE COMMUNITY AS A WHOLE, BRONDEL NOTED.

6. COMMISSION AND MEMBER STATE OFFICIALS TELL US THAT THERE ARE STILL SHARP DIVISIONS AMONG MEMBER STATES REGARDING THE COMMISSION'S PROPOSAL. THE DANISH PRESIDENCY HAS PREPARED A NEW DOCUMENT FOR LIMITED OFFICIAL USE

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CONSIDERATION BY THE MAY 30 COUNCIL ENTITLED "COUNCIL CONCLUSIONS ON REFINING" (BEING POUCHED EUR/RPE) WHICH ATTEMPTS TO RECONCILE THESE DIFFERENCES. FOR EXAMPLE, PROVISION IS MADE FOR 15 MILLION UNITS OF ACCOUNT TO MEET THE ITALIAN REQUEST FOR FINANCIAL ASSISTANCE TO ENCOURAGE CLOSURE OF SURPLUS REFINING CAPACITY. IT ALSO CREATES A SPECIAL MEMBER-STATE GROUP TO MEET THE UK REQUIREMENT THAT THE MEMBER STATES SHOULD BE INVOLVED IN THE COMMISSION'S CONSULTATIONS WITH THE OIL INDUSTRY. A SPECIAL EXEMPTION IS MADE FOR THE CONSTRUCTION OF NEW PETROLEUM REFINERIES IN ORDER TO SATISFY THE UK AND IRELAND, ALTHOUGH THE UK OBJECTS TO A FOOTNOTE WHICH SPECIFIES THE TWO REFINERIES WHICH CAN BE COMPLETED IN ENGLAND. IN RECOMMENDING CREATION OF AN AD HOC GROUP OF MEMBER STATE REPRESENTATIVES TO STUDY POSSIBLE "MEASURES RELEVANT TO IMPORTS OF REFINED PRODUCTS", THE COMPROMISE DOCUMENT REFLECTS CONCERN BY DENMARK AND OTHER COUNTRIES THAT THE COMMUNITY SHOULD NOT ABANDON A LIBERAL POLICY TOWARD IMPORTS FROM NON-MEMBER COUNTRIES. THERE IS ALSO REFERENCE TO THE NEED TO "BEAR IN MIND PROVISIONS OF COMMUNITY AND NATIONAL (READ U.S.) COMPETITION RULES".

7. UNDOUBTEDLY THE MOST CONTROVERSIAL SECTION OF THE DANISH DOCUMENT, HOWEVER, REMAINS THE REFERENCE TO THE COMMISSION'S INTENTIONS "TO ESTABLISH INDICATIVE FORWARD RECOMMENDATIONS OR FORECASTS FOR FUTURE ACTIVITY ON THE DEVELOPMENT OF COMMUNITY REFINING ACTIVITY, HAVING REGARD TO ESTIMATED DEMAND" AND "TO ORGANIZE APPROPRIATE CONSULTATIONS WITH OIL COMPANIES" AND TRADE UNIONS. EVEN THOUGH THE TERM "INDICATIVE FORWARD PLANNING" IN THE EARLIER DRAFTS OF THESE CONCLUSIONS HAS BEEN DROPPED IN FAVOR OF "RECOMMENDATIONS OR FORECASTS" AS NOTED ABOVE, THE GERMANS AND THE BRITISH ARE BOTH OPPOSED TO THE LIMITED OFFICIAL USE

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REGIMENTATION IMPLICIT IN THE PROPOSAL WHICH THEY FEEL IS NOT NECESSARY SINCE THE OIL INDUSTRY CAN RESOLVE THE REFINING PROBLEM ITSELF OVER TIME. IN CONTRAST, HOWEVER,

THE ITALIANS, AND TO A LESSER EXTENT THE FRENCH, FEEL THAT THE PROPOSAL DOES NOT GO FAR ENOUGH. THE POSSIBILITY THAT A COMMUNITY REGULATION MAY BE REQUIRED IS ALSO NOTED IN THE DANISH DOCUMENT.

8. NOT ONLY ARE DIVISIONS AMONG THE MEMBER STATES LIKELY TO PREVENT EARLY APPROVAL OF THIS MEASURE, BUT AS ONE OF THE MEASURES IN AN ENERGY "PACKAGE" PROPOSED BY THE DANISH PRESIDENCY, ITS APPROVAL IS PRESENTLY TIED TO THAT OF FOUR OTHER MEASURES. SINCE AGREEMENT ON THESE MEASURES MAY ALSO BE DIFFICULT, ADOPTION OF THE DANISH COMPROMISE CONCLUSIONS ON THE REFINING INDUSTRY AT THE MAY 30 ENERGY COUNCIL APPEARS DOUBTFUL. HOWEVER, DANISH AMBASSADOR RIBERHOLDT TOLD THE AMBASSADOR THAT HE WAS STILL REASONABLY OPTIMISTIC THAT THE UK, AFTER EXPRESSING ITS INITIAL OBJECTIONS, WOULD AGREE TO THE PROPOSAL AND PERMIT ITS ADOPTION ON MAY 30.

9. COMMENT: US COMPANIES ARE BEING PLACED UNDER PRESSURE BY THE COMMISSION'S PROPOSED REFINERY MEASURE: IF THEY COOPERATE WITH THE COMMISSION, THEY ARE CONCERNED ABOUT ANTI-TRUST IMPLICATIONS AND THE APPARENT GREATER REGIMENTATION OF THE EC OIL SECTOR; IF THEY REFUSE, THEY FEAR THEY WILL PLAY INTO THE HANDS OF SOME EUROPEAN-BASED OIL COMPANIES WHICH WOULD LIKE SOMEHOW TO DRAW A DISTINCTION BETWEEN THEMSELVES AND THE AMERICAN MULTINATIONALS IN THE EC. WHILE THE US COMPANIES HOPE THE UK WILL OPPOSE THE MEASURE AND THE CONTINUATION BY THE COMMISSION OF ITS EFFORTS TO "RATIONALIZE" THE REFINERY SECTOR, IT IS POSSIBLE THAT HMG IS COUNTING ON THE RELUCTANCE OF SOME COMPANIES TO PARTICIPATE IN THE COMMISSION'S PROGRAM IN ORDER TO PREVENT ITS IMPLEMENTATION. HINTON

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